BEFORE THE
FEDERAL MARITIME COMMISSION

Petition Nos. **P3-03, P5-03, P7-03, P8-03, P9-03**

CONSOLIDATED SUPPLEMENTAL COMMENTS OF BAX GLOBAL INC. TO PENDING PETITIONS FOR RULEMAKING AND EXEMPTIONS RELATING TO CONFIDENTIAL SERVICE CONTRACTS AND NON-VESSEL-OPERATING COMMON CARRIERS

Of Counsel:
THOMPSON COBURN LLP
Edward J. Sheppard
Richard K. Bank
Ashley W. Craig
Suzanne L. Montgomery
1909 K Street, N.W.
Suite 600
Washington, D.C. 20006
Telephone: 202-585-6900
Facsimile: 202-585-6969

Therese G. Groff
General Counsel
BAX Global Inc.
440 Exchange Drive
Irvine, CA 92602

Attorneys for BAX Global Inc.

January 16, 2004

BEFORE **THE.**
FEDERAL MARITIME COMMISSION
WASHINGTON, D.C.

Petition Nos. P3-03, P5-03, P7-03, P8-03, P9-03

CONSOLIDATED SUPPLEMENTAL COMMENTS OF BAX GLOBAL INC. TO PENDING PETITIONS FOR RULEMAKING AND EXEMPTIONS RELATING TO CONFIDENTIAL SERVICE CONTRACTS AND NON-VESSEL-OPERATING COMMON CARRIERS

Pursuant to the Notices published in the Federal Register on Wednesday, November 19, 2003, 68 Fed. Reg. 65,287, BAX Global Inc. ("BAX") submits Consolidated Supplemental Comments to the following Petitions currently pending before the Federal Maritime Commission (the "FMC" or the "Commission"):

- P3-03: Petition of United Parcel Service, Inc. ("UPS") for Exemption Pursuant to Section 16 of the Shipping Act of 1984 to Permit Negotiation, Entry and Performance of Service Contracts;
- P5-03: Petition of National Customs Brokers and Forwarders Association of America, Inc. ("NCBFAA") for Limited Exemption from Certain Tariff Requirements of the Shipping Act of 1984;
- P7-03: Petition of Ocean World Lines, Inc., for a Rulemaking to Amend and Expand the Definition and Scope of "Special Contracts" To Include All Ocean Transportation Intermediaries;
- P8-03: Petition of BAX Global Inc. for a Rulemaking; and
- P9-03: Petition of C.H. Robinson Worldwide, Inc. for Exemption Pursuant to Section 16 of the Shipping Act of 1984 to Permit Negotiation, Entry and Performance of Confidential Service Contracts.

NVOCC contract authority is of critical importance to companies such as BAX, UPS, and Federal Express ("FedEx"). The participation' of these companies in the

[1] UPS currently has an individual Section 16 exemption request pending before the FMC (see Commission Dkt. No. P3-03) and FedEx (through its NVOCC subsidiary FedEx Trade

proceedings currently before the Commission underscores how dramatically the international ocean shipping industry has changed since Congress amended the Shipping Act five years ago. Each company's respective petition and/or comments calls upon the Commission to correct a regulatory anomaly not envisioned when Congress passed the Ocean Shipping Reform Act of 1998[2] ("OSRA"). In 1998, none of these American-owned and managed multimodal, global transportation providers were actively involved in matters before the Commission. Today, UPS, BAX, FedEx, and similar companies represent an emerging new dimension in international ocean shipping. BAX looks forward to working with the Commission and embraces its role as a stakeholder in the international ocean shipping regulatory community.

BAX continues to maintain that a set of regulations permitting sufficiently qualified NVOCCs to offer confidential service contracts will benefit the U.S. international shipping trade, and will recognize that there now exist qualified NVOCCs that have the financial background and industry experience sufficient to be enjoy this privilege. As BAX offered in its original Petition for Rulemaking (tiled September 11, 2003) and its Consolidated Response (filed October 10, 2003), an agency rulemaking proceeding will efficiently provide an organized method for consideration of this issue in a single action, rather than through a piecemeal approach requiring individual exemption request by NVOCCs.

BAX believes that it is evident from the comments received in all five (5) petitions that consolidating and incorporating the individual exemption requests of UPS.

Networks & Brokerage, Inc.) submitted comments supporting the BAX Petition for Rulemaking (dated Oct. 10, 2003).

2 Pub. L. No. 105-258, title I, § 101,112 Stat. 1902 (Oct. 14, 1998).

and C.H. Robinson Worldwide, Inc. in an overall rulemaking are the best means for Commission consideration of the pending petitions. Accordingly, BAX renews its request that the Commission defer consideration of the NCBFAA's Petition at this time, and that the agency deny the Petition for Rulemaking of Ocean World Lines, Inc. in favor of the rulemaking proposed by BAX.

BAX herein supplements its original Petition for Rulemaking and its Consolidated Response and replies to comments previously provided by parties in the above Petitions. Specifically, BAX shows that the Commission has the statutory authority to (1) initiate a rulemaking on the issue of NVOCC service contract authority; (2) base a proposed rule on a certain set of criteria providing qualified NVOCCs with such authority; and (3) determine whether such a rulemaking comports with the legislative history of the Shipping Act of 1984[3] (the "1984 Act" or the "Shipping Act").

A. The FMC Has tbe Authority to Initiate a Rulemaking Proceeding.

As a general matter, the Commission has the statutory authority to promulgate rules and regulations implementing the Shipping Act, as amended by OSRA. Rulemaking authority is not unique to the Commission and is a cornerstone to the effective functioning of all federal administrative agencies. Because of this authority, federal agencies are recipients of a form of legislative power, for Congress has determined that certain aspects of public policy are best comprehended and effectively implemented by agencies with oversight expertise.[4] The Commission (and its

3 Pub. L. No. 98-237, § 2, 98 Stat. 67 (Mar. 20, 1984); 46 U.S.C. app. § 1701 *et seq.* (2000).

4 Alfred C. Aman, Jr. &William T. Mayton, ADMINISTRATIVE LAW 40-41, 79-81 (West Group 1998).

predecessor agencies) has a long-standing role (beginning in 1916) in overseeing the ocean shipping industry via implementation of regulations and policy decisions affecting those it regulates.

Through the 1984 Act, Congress explicitly granted broad rulemaking authority to the Commission to "prescribe rules and regulations as necessary to carry out this Act."[5] The Commission's general regulations also confirm that its regulatory authority is derived in part from the Shipping Act, "[t]he Commission regulates common carriers by water and other persons involved in foreign commerce of the United States under the provisions of the Shipping Act of 1984."[6] The federal courts have routinely recognized and upheld the broad rulemaking authority of the FMC and consistently uphold regulations issued by the agency relating to various ocean-shipping activities.[7]

Congress clearly authorized the Commission to initiate a rulemaking on matters that fall within the scope of the Shipping Act and the agency's area of authority *(i.e.,* activities, matters, conduct, *etc.,* relating to the regulatory process for the carriage of goods by water in U.S. foreign commerce). The UPS and BAX Petitions (calling on the Commission's granting of service contract authority for *certain* NVOCCs) are subjects within the Commission's rulemaking jurisdiction.

---

5 46 U.S.C. app. § 1716(a).

6 46 C.F.R. § 501.2(a) (2002).

7 *See, e.g., United States v. American Union Transport, Inc., 327* U.S. 437 (1946); *National Customs Brokers & Forwarders Ass'n of Am., Inc. v. United States, 883* F.2d 93 (D.C. Cir. 1989) (Bader Ginsburg, *J.); Trans-Pacific Conf. of Japan/Korea v. Federal Mar. Comm'n, 650* F.2d 1235 (D.C. Cir. 1980); *Outward Continental N. Pac. Freight Conf. v. Federal Mar. Comm 'n, 3 85* F.2d 981 (D.C. Cir. 1967); *Pacific Coast European Conf. v. Federal Mar. Comm'n, 376* F.2d *785* (DC. Cir. 1967); *New York Foreign Freight Forwarders & Brokers Ass'n v. Federal Mar. Comm'n, 337* F.2d 289 (2d Cir. 1964).

B. Section 16 of the Shipping Act Provides the Statutory Basis for Granting Service Contract Authority for Qualified Entities.

While BAX does not ask for a Section 16 exemption (it calls for the FMC to initiate a general rulemaking on service contract authority), some commentators have raised questions as to the FMC's Section 16 authority with respect to service contract authority. This is due in large part to UPS' individual Section 16 exemption request. We therefore address this issue to assist the Commission in considering each possible regulatory option.

The FMC has broad authority in evaluating any petition for change in the regulatory scheme filed by interested parties. This authority has been used throughout the years to address a variety of regulatory issues, including:

1. exempting ocean common carrier agreements from certain reporting requirements as mandated by the Shipping Act;*
2. exempting ocean transportation intermediaries (acting as common carriers) transporting military household goods and personal effects from tariff filing (now publication) requirements;' and
3. exempting controlled carriers from the Shipping Act's prohibition on certain types of rate actions."

---

8 *See Motor Vehicle Mfrs. Ass'n of the United States, Inc. & Wallenius Lines, N.A. -Joint Application for Exemption From Certain Requirements of the Shipping Act of 1984 for Certain Ltd. Shipments of Passenger Vehicles, 26* S.R.R. 1269 (F.M.C. 1994).

9 *See Household Goods Forwarders Ass 'n of Am., Inc. — Petition for Exemption, 27* S.R.R. 277 (F.M.C. 1995).

10 *See Petition of China Ocean Shipping (Group) Co. for a Ltd. Exemption from Section 9(c) of the Shipping Act of 1984,* 28 S.R.R. 144 (F.M.C. 1998).

In each instance, the Commission carefully considered the request in light of the Shipping Act's statutory requirements and Congressionally mandated Section 16 exemption authority. It is appropriate and proper that the Commission selectively use its Section 16 exemption authority to fashion legislative rules responding to matters Congress did not deliberate — or at times even foresee. Importantly, it was noted in the Report issued by the Senate Commerce Committee on OSRA, that:

> while Congress has been able to identify broad areas of ocean shipping commerce for which reduced regulation is clearly warranted, the FMC is more capable of examining through the administrative process specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress."

Congress intended the Commission to exercise its Section 16 authority to further the deregulatory work of OSRA, provided that the *overall* regulatory scheme created by Congress is preserved. Granting service contract authority to well-qualified NVOCCs is undoubtedly a case for Commission action in its post-OSRA regulatory role, and comports with the requirements as set forth under the Shipping Act by Congress.

A petitioner for an exemption from the Shipping Act has the burden of proving that an exemption is necessary in the first instance and must show that the exemption will not result in a reduction in competition or be detrimental, to commerce.'* Congress

---

11 See S. Rep. No. 105-61 at 30, 105th Cong., 1st Sess. (1997).

12 *See Petition of China Ocean Shipping (Group) Co., 28* S.R.R. at 148.

revised the Commission's exemption authority with passage of OSRA[13] providing the agency with broader exemption authority than it previously had.[14]

For the FMC to find that an exemption request does not reduce competition, the exemption should apply to one or a limited group of entities that comprise a single market. For example, the Commission held that no reduction in competition would result from an exemption applicable to all Roll-On and Roll-Off carriers involved in the transport of large numbers of vehicles because shippers using these types of carriers as a class generally were not interested in shipping via containerships.[15] The Commission has also found previously that an exemption allowing a controlled carrier to reduce its rates giving only one day of notice rather than 30 days as required by the Shipping Act would actually increase competition because it created greater flexibility in negotiating rates for time-sensitive shipments.[16]

Similarly, the Commission has defined "detriment to commerce" as any "adverse economic impact on a competing carrier," or other "intangible" effects, such as the inability of a would-be market participant to enter the relevant market.[17] The

---

13 See Pub. L. No. 105-258, 112 Stat. 1912, § 114 (Oct. 14, 1998).

14 *Compare 46* U.S.C. app. § 1715 (2000) (providing that Commission "may by order or rule exempt for the future any class of agreements between persons subject to this chapter or any specified activity of those persons from any requirement of this chapter *if it finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce"]* (emphasis added), *with* 46 U.S.C. app. § 1715 (1994) (granting Commission authority to grant exemption authority that does not "substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition, or be detrimental to commerce").

15 *Motor Vehicle Mfrs. Ass'n of the United States, Inc., 26* S.R.R. at 1279.

16 *Petition of China Ocean Shipping (Group) Co., 28* S.R.R. at 149.

17 *Motor Vehicles Mfrs. Ass'n of the United States, Inc., 26* S.R.R. at 1299.

Commission does "not restrict the definition of detriment to commerce to those rates which prevent a commodity from moving. Rather, [it] define[s] detriment as something harmful . . ."[18] According to past Commission Section 16 decisions, if an exemption is good for competition, it is by definition not harmful to commerce.[19] An exemption that does not harm commerce operates to shield the market from uncertainty.

Use of the Shipping Act's Section 16 exemption authority provides immediate relief to both the shipping industry and the public. It can — and should -be used to provide companies (such as UPS, BAX, and FedEx) with service contract authority, while such action ensures adherence to OSRA's legislative history and preserves the current regulatory scheme instituted by Congress. Granting this type of authority to these companies is consistent with past Commission use of its Section 16 authority and it is prudent legislative rulemaking.

C. A Commission Rule Granting *Qualified NVOCCs* Service Contract Authority Is Consistent with Congressional Intent.

In reply to the Petitions of UPS, BAX, and others, the Commission received comments (mostly from ocean common carriers) suggesting Congress concluded ***all*** NVOCCs should be prohibited permanently from enjoying service contract authority.[20] These comments also suggest that OSRA's legislative history precludes the Commission from using its Section 16 authority to grant service contract authority to NVOCCs.

---

18 *Id.* (citing *Investigation of Ocean Rate Structures,* 12 F.M.C. 34, 61 (1968), *aff'd* 417 F.2d 749 (D.C. Cir. 1969)).

19 *Petition of China Ocean Shipping (Group) Co., 28* S.R.R. at 149.

20 *See* ***generally*** comments submitted by the World Shipping Council (dated Oct. 10, 2003, tiled in Dkt. No. P3-03 and P8-03); American President Lines, Ltd. and APL Co. Pte., Ltd. (dated Oct. 10, 2003, tiled in Dkt. No. P3-03 and P8-03); the Transportation Institute (dated Oct. 10, 2003, tiled in Dkt No P3-03 and P8-03); and the International Longshoremen's Ass'n. (dated Sept. 25, 2003, filed in Dkt. No. P3-03).

While BAX recognizes that OSRA was the product of many years of legislative efforts and reflects an industry-wide compromise, there is no evidence in its legislative history prohibiting the *selective* application of service contract authority to ***well-qualified*** NVOCCs (such as the BAX and, arguably, the UPS Petitions' request). Comments received to date by the Commission in response to the UPS and BAX Petitions merely highlight the Congressional debate surrounding service contract authority for ***all*** NVOCCs. A Commission rulemaking responding to congressional concerns raised during OSRA's drafting to a *blanket* application of NVOCC service contract authority more than adequately preserves the Congressional regulatory framework of the 1984 Act, while representing a permissible exercise of the agency's rulemaking authority.

The Commission should consider all aspects of OSRA's legislative history when examining this issue, and, indeed, it is particularly improper to rely on legislative history pertaining to proposed amendments to bills?' The comments of Senators Breaux and Hutchinson, Representative Oberstar and others, suggesting that only vessel operators

---

[21] Because the range of reasons for rejecting a proposed amendment to a statute or bill vary considerably, the rejection of any such amendment is not properly considered in interpreting the statute. As one legal commentator has explained, the proposed amendment:

> may be rejected by some legislators because they disagree with its substance (but not necessarily the same substance). On the other hand, those who agree with the substance may nevertheless vote against it as a spurious or unnecessary attempt to clarify. Simple non-action, being consistent with many explanations in circumstances not calling for consensus, has no probative value for any purpose.

Dickerson, *Statutory Interpretation: Dipping into Legislative History,* 11 Hofstra L. Rev. 1125, 1133 (1983). Indeed, the fact that OSRA was compromise legislation confirms that its legislative history is of no value in determining the scope of the Commission's authority. In fact, the Senate Commerce Committee Report on S.414 (the OSRA legislation) actually contains explanatory remarks on why NVOCCs should enjoy service contract capability, " . . . [t]he new [service contract] definition allows NVOCCs to enter into service contracts as common carriers . . . the Committee . . believes that this change will provide a more competitive ocean transportation system, and which will ultimately help smaller shippers who often utilize NVOCCs to procure shipping services." S. Rep. No. 105-61 at 19, 105th Cong., 1st Sess. (1997).

should enjoy service contract authority because these companies "have invested millions of dollars in the vessel and pay for its operating cost,"[22] should be. considered in the context of the UPS and BAX Petitions. UPS and BAX both note in their respective Petitions direct investments in various transportation assets (air and ground transport fleets) and diversified, sophisticated intermodal transportation offerings. The comments of key Members of Congress must be reevaluated in the wake of sweeping changes to the ocean shipping industry since OSRA's enactment in 1998. Congress explicitly provided the Commission with the authority (through Section 16) to respond to changing marketplace dynamics without the need to legislatively amend the Shipping Act. The existence of Section 16 (and the continuation of the FMC's statutory exemption authority following the enactment of OSRA) illustrates that the Shipping Act is not a "static" piece of legislation fixed in time as the maritime world stood in 1998.

Congressional comments made while shaping OSRA support the proposition that limiting service contract authority to vessel operators was prudent at that time because it was believed: (1) the limitation would help support a robust U.S.-flag container shipping industry; (2) it would encourage investment in vessel construction; and (3) that the types of NVOCCs that would benefit from service contract authority were large, foreign (mostly European) companies -not American-owned and operated enterprises.[23] Simply put, the Congressional debate in 1998 surrounding this issue was limited to the above factors. Congress never envisioned the world that exists today. Nothmg in OSRA's legislative history prohibits the limited application of service contract authority

---

22 See Remarks of Rep. Oberstar, 144 Cong. Rec. at H7018 (Aug. 4, 1998).

23 See Remarks of Sen. Breaux, 144 Cong. Rec. at S3306 (Apr. 21, 1998).

to well-qualified, financially sound companies with a strong United States presence, reflecting a commitment to the U.S. intermodal supply chain.

In 2004, as the Commission is well aware, the only remaining American-owned and operated steamship company of significant size serving the U.S. foreign commerce is Crowley Maritime Corp. (Crowley Liner Services).[24] American President Lines was acquired in 1997 by Neptune Orient Lines (a Singaporean company); Sea-Land Service was acquired in 1999 by A.P. Möller -- Mærsk (a Danish company); Farrell Lines was acquired by P&O Nedlloyd (an Angelo-Dutch company) in 2000; Crowley Maritime Corp. sold its international South American operations to Hamburg-Süd (a German company) in 1999; and in 1996, Lykes Bros. Steamship Company was acquired during its bankruptcy reorganization by Canadian Pacific (the parent company of Australia-New Zealand Direct Line (ANZDL), Canada Maritime, Cast, Contship Containerlines, Italia Line, and TMM Lines). Thus, if one policy reason for restricting service contract authority to vessel operators was to support and reward the U.S.-owned container shipping fleet, it is difficult to argue today that such rationale is appropriate. Decision-making for these companies (regardless of the flags they fly), now resides in Singapore, Copenhagen, Hamburg, Ottawa, and elsewhere outside of the United States.

Congress clearly did, not foresee the rise of financially sound, firmly established companies, such as UPS, BAX, and FedEx, entering into international ocean-shipping as they have. These transportation companies are American-owned and operated, with dedicated transportation assets in a variety of modes. Although they have decided not to

[24] In addition to Crowley Maritime Corp., other U.S.-owned and/or operated ocean common carriers in foreign commerce (via direct or space charter arrangements) as listed on the FMC's website (http://www.fmc.gov, last visited on Jan. 16, 2004) include: Waterman Steamship Corporation; Central Gulf Lines, Inc.; Matson Navigation Company, Inc.; and Star Line, LLC.

dedicated transportation assets in a variety of modes. Although they have decided not to purchase, charter, and/or operate ocean-going vessels, they provide important ocean transportation supply chain solutions to U.S. importers and exporters on a point-to-point basis and have invested heavily in various transport assets. Service contract authority is an important issue for these companies and their shipper customers, who demand fully integrated and *confidential* logistics contracts — including the ocean segment of their international supply chains. While Congress did not envision the dynamic growth and participation of these types of U.S.-owned and operated ocean transportation companies, it did provide the Commission with a means to address such changes in both Section 16 of the 1984 Act and through the Commission's broad rulemaking authority.

To the extent the legislative history might be read to suggest otherwise, the historical context confirms that the omission of NVOCCs from the grant of service contract authority in OSRA is based upon the very different world of NVOCCs that existed prior to the enactment of OSRA. When the industry facts and circumstances have changed as dramatically as this industry has changed in the past five years, the Congressional debate becomes even less applicable, and in fact, the U.S. Supreme Court has upheld agency rulemakings that superficially appeared that they might be directly contrary to the legislative history when that history was reflective of the state of the industry at the time of the enactment of the statute, which had since changed." BAX

---

[25] For example, in *Pattern Makers' League of North America, AFL-CIO v. National Labor Relations Board, 473* U.S. 95 (1985), the Supreme Court upheld action by the NLRB, despite the fact that it appeared to be directly contrary to legislative history. The Court explained that the legislative history had no application because it was based upon circumstances that existed in labor relations when the statute was enacted, but had changed dramatically prior to the agency's action. See *id.* at 110. Similarly, in *Trans-Pacific Freight Conference of Japan/Korea v. Federal Maritime Commission, 650* F.2d 1235 (D.C. Cir. 1980), the D.C. Circuit found that the Commission had rulemaking and enforcement authority that arguably was inconsistent with the

maintains that the recent commercial developments in the ocean shipping industry are not inconsistent with the overall deregulatory thrust of OSRA and, in fact, underscore the authority of and need for the Commission to grant UPS, FedEx, BAX (as well as similarly positioned companies) service contract authority under the Commission's rulemaking authority.

The legislative history cited by the World Shipping Council, APL, the Transportation Institute[26], and others, fails to recognize that Congress did not rule out granting contracting authority to *certain* types of NVOCCs. In fact, OSRA's legislative history does not deal with this aspect and that is the issue now confronting the Commission. Neither the UPS nor BAX Petitions take issue with the Congressional consideration surrounding service contract authority for *all* NVOCCs.[27] The issue that is ripe for the Commission's consideration under the Shipping Act's Section 16 is simple: does the Commission have the authority to adopt a rule whereby *qualified* NVOCCs are

---

legislative history of the Shipping Act of 1916 and its amendments due to changed circumstances in the industry that necessitated the increased role of the Commission. In that case, the court found that the Commission had authority to address — through rulemaking -the self-policing practices of the conference, rather than on an *ad hoc* basis, as contemplated by the legislative history. See *id.* at 1245-47.

Both the Supreme Court and the D.C. Circuit have shown that they will not tie an agency's hands when au industry grows and changes on its own to address Congress' concerns about the industry based upon commentary buried in legislative history. Indeed, the very role of the administrative agency is to use its expertise in the industry before it to address the very issues presented by changing circumstances in any agency, rather than to force the industry and the public to go through the long, arduous process of legislative change.

[26] See supra note 20.

[27] The roll call vote on the so-called Gorton Amendment might provide a basis for denying a *blanket* exemption for all NVOCCs. Significantly, there was no discussion of establishing criteria that recognizes certain types of NVOCCs may be able to enjoy this right. See 144 Cong. Rec. at S3311 (Apr. 21, 1998). In any event, under established canons of statutory construction, it is not appropriate to consider this Amendment in interpreting the Commission's authority. See *supra* note 2 1.

authorized to offer service contracts as common carriers? The legislative history relating to Section 16 supports the agency's authority to consider issues that will further deregulatory aspects of the law, not impede effective regulation of the industry, and have not been considered by Congress. All factors support a rulemaking proceeding designed to provide qualified NVOCCs with service contract authority.

Conclusion

The Commission has the authority to exempt NVOCCs meeting certain threshold criteria from the prohibition on NVOCCs from'utilizing service contracts as common carriers. In its original Petition for Rulemaking, BAX provided the Commission with a set of recommended criteria establishing the type of NVOCC that should enjoy this contract capability. Surely, Congress did not intend that the Shipping Act be an immutable grant of authority to the Commission." The Commission's use of its Section 16 exemption authority would redresses the currently anticompetitive aspects associated with the lack of NVOCC service contracting.

[28] See BAX Pet. at 2-3 (Sept. 11, 2003)

Respectfully submitted,

Therese G. Groff
General Counsel
BAX Global Inc.
440 Exchange Drive
Irvine, CA 92602

THOMPSON COBURN LLP
Edward J. Sheppard
Richard K. Bank
Ashley W. Craig
Suzanne L. Montgomery
1909 K Street, N.W., Suite 600
Washington, DC. 20006
Telephone: 202-585-6909
Facsimile: 202-585-6959

Attorneys for BAX Global Inc.

DATE: January 16, 2004

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Consolidated Supplemental Comments have been served upon the persons or organizations on the following service list, this 16 day of January 2004, in the manner indicated below:

Christopher C. Horak

Edward D. Greenberg
David K. Monroe
Counsel for the National Customs Brokers and Forwarders Ass' n. of America, Inc.
Galland Kharasch Greenberg Felhnan & Swirsky, P.C.
1054 Thirty-First Street, N.W.
Washington, D.C. 20037
(by email)

J. Michael Cavanaugh
Counsel for United Parcel Service
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006
(by email)

Carlos Rodriguez
Counsel for C.H. Robinson Worldwide, Inc.
Rodriguez O'Donnell Ross Fuerst Gonzalez & Williams, P.C.
1211 Connecticut Avenue, N.W., Suite 800
Washington, DC. 20036
(by email)

Charles L. Coleman, III
Counsel for United Parcel Service
Holland & Knight LLP
50 California Street, Suite 2800
San Francisco, CA 94111
(by email)

Leonard L. Fleisig
Counsel for Ocean World Lines, Inc.
Troutman Sanders LLP
401 Ninth Street, N.W., Suite 100
Washington, D.C. 20004
(by email)

John Butler
Counsel for the World Shipping Council
Sher & Blackwell, LLP
1850 M Street, N.W., Suite 900
Washington, D.C. 20036
(by email)